

PUBLIC VERSION



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August 13, 2021

Via CDX and Email

Evan Belser
Acting Director, Air Enforcement Division
U.S. Environmental Protection Agency
MC 2242A
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: *United States v. Orion Engineered Carbons, LLC*, Consent Decree (Case No. 6:17-cv-01660) – Notice of Intent to Assert Claim of Force Majeure – Sixteenth Supplemental Update

Dear Mr. Belser:

Orion Engineered Carbons, LLC (“Orion”) provides this letter in response to EPA’s letters dated April 24, 2020, October 21, 2020, January 25, 2021, and March 18, 2021. EPA’s April 24, 2020 letter requested updates regarding Orion’s March 23, 2020 notice of intent to assert force majeure. EPA’s April 24, 2020 letter requested an initial response within four weeks and supplemental updates every four weeks thereafter. Orion provided its initial response on May 21, 2020 (the “Initial Response”). This letter is Orion’s sixteenth supplemental update.

We ask that you treat the redacted portions in the public version of this submittal as confidential business information (CBI) pursuant to 40 C.F.R. Part 2. Orion’s updated responses to the questions in EPA’s April 24, 2020 letter follow.

Ivanhoe

1. *Clarify the meaning of the term, “pollution control projects required by the CD at [] Ivanhoe.”*

No change since Initial Response.

2. *Do the PM Early Warning Systems, baghouses and incineration devices necessary to achieve MACT compliance remain operational?*

No change since Initial Response.

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3. *Are any of Orion's [REDACTED] employees working onsite, and if so, how many?*

[REDACTED]

[REDACTED]

[REDACTED]

4. *What activities are the employees performing? Are they making carbon black?*

[REDACTED]

5. *Provide any updates received from Defendant's contractors related to COVID-19.*

See response to Question 3.

6. *Provide any updates, orders, or directives from state and local officials related to COVID-19.*

The following is a brief summary of orders affecting Orion issued since the last supplemental update:

Louisiana

July 21: **131 JBE 2021**.¹ Governor Edwards issued a proclamation declaring that the statewide public health emergency due to COVID-19 in Louisiana “continue[s] to exist” and “is by no means over”—including in light of the threat posed by variants of the virus—and that there is still “significant” need for mitigation measures. According to this proclamation, the Delta variant has significantly increased cases and hospitalizations, “with the state giving up all of the progress made since mid-February.” The Governor reiterated several COVID-19 mitigation measures, including recommendations that individuals at higher risk should generally stay at home, and encouraging or in some case requiring the use of face coverings. The proclamation reserves authorities to local governments to issue more restrictive requirements. The declaration also permits private businesses to issue more restrictive COVID-19 mitigation measures on their property. The declaration also directs all state departments and agencies to cooperate in actions that Louisiana takes “in response to the effects of this event.”

132 JBE 2021.² Governor Edwards issued another proclamation that same day, renew several provisions of a prior proclamation (118 JBE 2021) regarding COVID-19, including with respect to certain federal hours limits for operators of commercial vehicles. Additionally, the declaration directs all state departments to cooperate in actions that Louisiana takes “in response to the effects of this event.”

July 23: **133 JBE 2021**.³ Governor Edwards issued a proclamation strengthening the face covering provisions of his proclamation 131 JBE 2021, issued two days prior. The new proclamation “strongly” encourages “all individuals” to wear face coverings indoors, and when unable to socially distance from non-family

¹ State of Louisiana, Proclamation No. 131 JBE 2021 (July 21, 2021), *available at* <https://gov.louisiana.gov/assets/Proclamations/2021/131-JBE-2021-StateofEmergencySigned.pdf>.

² State of Louisiana, Proclamation No. 132 JBE 2021 (July 21, 2021), *available at* <https://gov.louisiana.gov/assets/Proclamations/2021/132-JBE-2021-StateofEmergencySigned.pdf>. Nine days later, Governor Edwards amended this proclamation to temporarily suspend certain licensing requirements for nurses to work in Louisiana hospitals. *See* State of Louisiana, Proclamation No. 136 JBE 2021 (July 30, 2021), *available at* <https://gov.louisiana.gov/assets/Proclamations/2021/136-JBE-2021-StateofEmergencyOcr.pdf>.

³ State of Louisiana, Proclamation No. 133 JBE 2021 (July 23, 2021), *available at* <https://gov.louisiana.gov/assets/Proclamations/2021/133JBE2021StateofEmergency.pdf>.

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members. The proclamation affirmatively authorized state agencies to adopt their own face covering provisions. Unlike prior proclamations, the new proclamation no longer exempted fully vaccinated groups of 10 or less individuals from certain face covering requirements.

August 2:

137 JBE 2021.⁴ Governor Edwards issued another proclamation declaring that the statewide public health emergency due to COVID-19 in Louisiana “continue[s] to exist.” The proclamation emphasized the significant effects that the Delta variant is having in Louisiana: “[B]y the time this order is in effect, the State will be at the highest number of hospitalized COVID-19 patients during the pandemic, without any signs that the increase is slowing,” and that “Louisiana currently has the highest case rate in the United States” According to the proclamation, “all of the progress made since January” has been lost, and “additional mitigation measures are necessary to slow new infections and to decrease pressure on hospitals and health care practitioners to maintain appropriate standards of care and preserve hospital capacity” Accordingly, the proclamation requires “all individuals” to wear face coverings when indoors, except in their private residences and in a few other narrow circumstances. The proclamation reserves authorities to local governments to issue more restrictive requirements. The declaration also permits private businesses to issue more restrictive COVID-19 mitigation measures on their property. The declaration also directs all state departments and agencies to cooperate in actions that Louisiana takes “in response to the effects of this event.”

August 3:

LDEQ order.⁵ Secretary Brown of the Louisiana Department of Environmental Quality (LDEQ) reactivated a prior COVID-19 Order that had expired on April 28, 2021. The Secretary found it necessary to reactivate the order “due to the recent surge in COVID-19 cases in the State of Louisiana resulting from the Delta variant of the virus,” which is conducive of conditions that “require immediate action to prevent serious threats to life or safety” throughout Louisiana. The LDEQ order places the entire State of Louisiana within an “Emergency Area,” within which the order’s provisions apply. Among other things, the order authorizes 30-day extensions of deadlines regarding certain reporting,

⁴ State of Louisiana, Proclamation No. 137 JBE 2021 (August 2, 2021), *available at* <https://gov.louisiana.gov/assets/Proclamations/2021/137-JBE-2021-StateofEmergencyOCR.pdf>.

⁵ https://www.deq.louisiana.gov/assets/docs/emergency_declarations/COVID1923rdDEAO.pdf

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inspection, and monitoring requirements, and authorizes electronic signatures from responsible officials.

7. *Provide a detailed construction schedule, reflective of the anticipated schedule as of March 1, 2020, (broken out by month), that specifies the work being performed, the number of contractors expected to be on site (noting the name of the company), the anticipated date of arrival of major parts, and any other relevant information.*

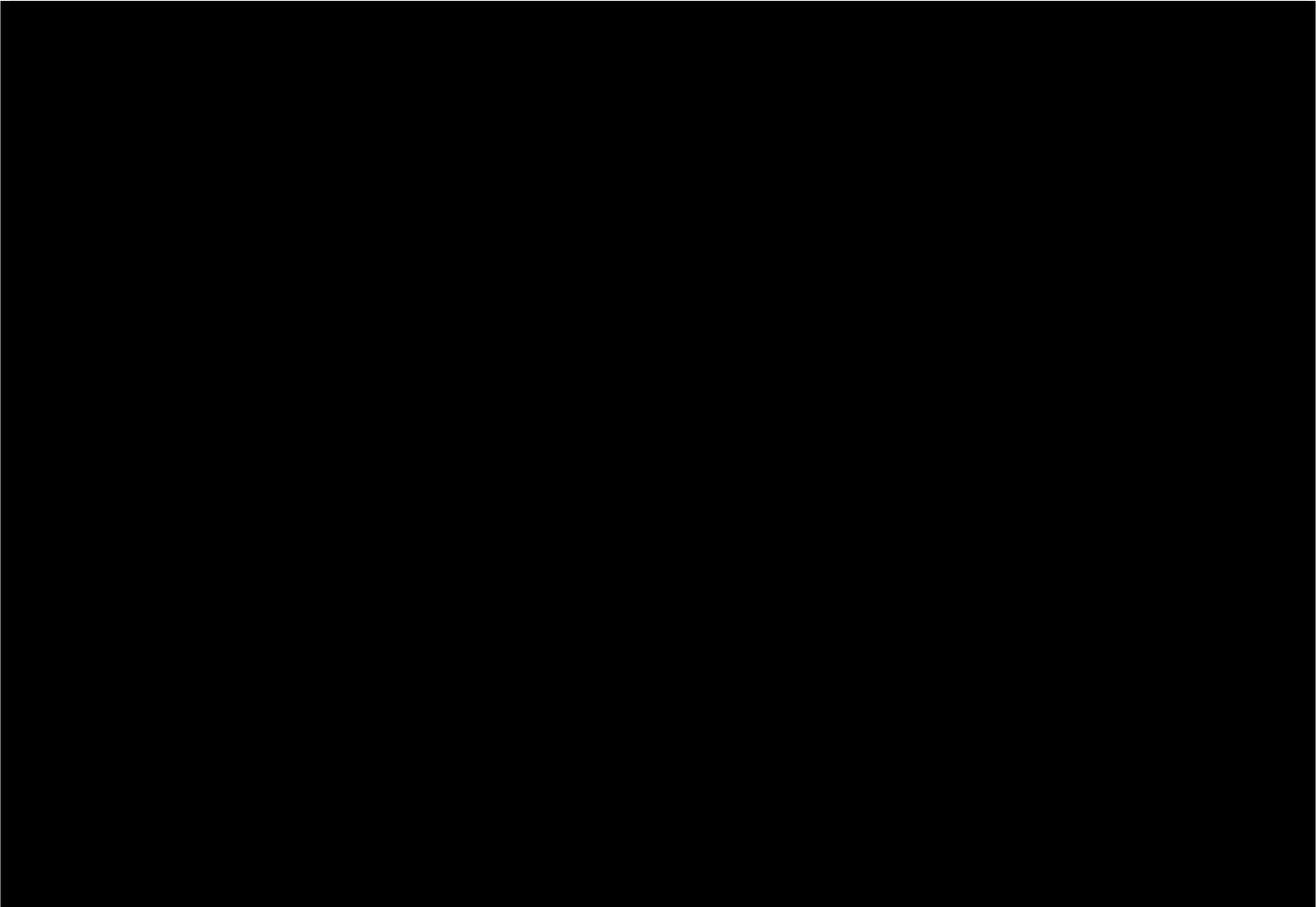
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Figure 1



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Conclusion

Orion and relevant staff for Plaintiffs have worked collaboratively to negotiate a modification to the consent decree that reflects the COVID-19 force pandemic force majeure event. We look forward to the lodging of that amendment with the court.

Orion remains committed to working with EPA to fulfill the requirements of the Consent Decree while protecting the health and safety of Orion's employees and contractors. Orion will provide its next update on or before September 10, 2021.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Painter", is positioned above the typed name.

Corning Painter
Chief Executive Officer
Orion Engineered Carbons, GmbH

cc: Kellie Ortega, U.S. Environmental Protection Agency
David Friedland, Beveridge & Diamond, P.C.
Jason Dunn, U.S. Department of Justice
Katherine Abend, U.S. Department of Justice
Celena Cage, Louisiana Department of Environmental Quality
Brandon Williams, Louisiana Department of Environmental Quality
Dwana King, Louisiana Department of Environmental Quality